

REMARKS

In response to the Office Action dated June 3, 2004, Applicants respectfully request reconsideration and withdrawal of the rejections of the claims.

Claim 1 was provisionally rejected as being unpatentable over claim 11 of copending Application Number 09/838,142. It is Applicants intention to cancel claim 11, and its dependent claims, from the '142 application, when responding to the Office Action in that application. Such cancellation will remove the basis for the provisional rejection.

Claims 1-22 were rejected under 35 U.S.C. §103, on the grounds that they were considered to be unpatentable over the *Smith et al.* patent (U.S. 6,067,582) in view of the *Borman et al.* patent (U.S. 6,708,195). With reference to claim 1, the Office Action contends that the *Smith* patent discloses all of the claimed subject matter, with the exception of the use of a locking signal. To this end, the rejection alleges that it would be obvious to employ a locking signal in the system of the *Smith* patent, in view of the teachings of the *Borman* patent. For the reasons presented below, it is respectfully submitted that the *Smith* patent does not disclose a number of the features recited in claim 1, in addition to the use of a locking signal. Furthermore, it is respectfully submitted that it would not be obvious to employ a locking signal in the system of the *Smith* patent.

The claimed subject matter is directed to the secure installation of software on a computer, e.g. a server, from a centralized location, via a network. In this type of system, an agent running on the computer securely receives a command to install software from a central communication gateway, and then performs the necessary actions to obtain and install the software. In this type of arrangement, the software

installation is initiated from the centralized location, i.e. the software is "pushed" to the computer from which it is installed.

In contrast to this arrangement, the *Smith* patent is directed to the sales and distribution of software to end users. The user provides a request for a software package, plus billing credentials, to an on-line "store". The software is downloaded and is "installed", by the user, sitting at the computer. The software to be installed contains an embedded agent that oversees the installation process. In this type of system, the installation of the software is initiated from the computer on which it is to be installed. In other words, the software is "pulled" onto the computer via the user, as part of the purchase transaction.

The difference between a "push" type of operation and a "pull" operation, as disclosed in the *Smith* patent, is recited in claim 1. For example, the first step of the claim is "sending a message to an agent residing on the hardware device informing the agent of a command to install software on the hardware device on which it resides." In connection with this subject matter, the Office Action refers to the *Smith* patent at column 4, lines 31-34. However, this portion of the patent does not disclose a message that is sent "to" an agent residing on the device where the installation is to take place. Rather, the patent discloses that a message is sent *from* the remote computer 10, i.e. the device on which the software is to be installed, to the content server 16.

Since the *Smith* patent discloses that the message is sent from the user's computer to the content server, it likewise does not disclose the second step recited in claim 1, namely "an agent verifying the validity of the message sent to it..." In the context of the *Smith* patent, since the message was sent from the remote computer,

there is no need for an agent residing on that computer to verify the validity of the message.

For at least these reasons, therefore, it is respectfully submitted that the "pull" technique disclosed in the *Smith* patent does not suggest the subject matter set forth in claim 1.

Furthermore, because of these differences, it would not be obvious to employ a locking signal in the system of the *Smith* patent. In the arrangement of the present invention, in which the installation of software on a device is initiated outside of the device itself, e.g. from a centralized location, there is always the possibility that two or more processes at the centralized location may attempt to install software on a given device at the same time. For this reason, a locking signal is employed at the central location, to prevent the two processes from competing for the same resources on the device.

In contrast, when the installation of software is initiated from the device itself, i.e. a pull operation, the same concerns do not exist. In other words, the device itself is not likely to initiate two separate requests to install software at the same time. Hence, there is no need to employ a locking signal in the context of the *Smith* patent.

Furthermore, there is no teaching in the *Borman* patent which suggests the applicability of a lock signal to the system of the *Smith* patent. As purported motivation for combining the teachings of the two references, the Office Action refers to the fact that the *Borman* patent relates to a multi-user environment, and is designed to control access to objects so that updates performed by one user are not overwritten by simultaneous updates by another user. There is no showing, however, that these teachings apply to the system of the *Smith* patent. Specifically,

there is no suggestion in the *Smith* patent that multiple users would be attempting to install software onto a given computer simultaneously. Rather, the *Smith* patent only suggests that a single user is operating the computer onto which software is being installed. The references to "multi-user environment" do not appear to have any relation to the teachings of the *Smith* patent. Hence, the concerns expressed in the *Borman* patent do not apply in the system of the *Smith* patent.

For these reasons, therefore, it is respectfully submitted that it would not be obvious to employ a lock signal in the system of the *Smith* patent, either in view of the *Borman* patent, or otherwise.

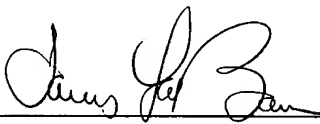
In view of the foregoing, it is respectfully submitted that all pending claims are patentable over the *Smith* and *Borman* references. Reconsideration and withdrawal of the rejection is therefore respectfully requested.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

Date: December 3, 2004

By: _____


James A. LaBarre
Registration No. 28.632

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620